



U.S. Citizenship
and Immigration
Services

FILE:

Office: LOS ANGELES, CA

Date: OCT 08 2004

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and stepchildren.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated September 23, 2003.

On appeal, counsel states that the decision of the interim district director fails to use the appropriate standard for extreme hardship and is incorrect as a matter of law. Counsel further contends that the decision is arbitrary and improper and is therefore a denial of the applicant's rights under the Constitution of the United States. *Form I-290B*, dated October 9, 2003.

In support of these assertions, counsel submits a brief, dated October 8, 2003. The entire record was considered in rendering this decision.

The record reflects that on February 9, 1991, the applicant was convicted of Lewd Acts with Child Under 14, a felony.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception - Clause (i)(I) shall not apply to an alien who committed only one crime if -

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States . . .

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Counsel asserts that as a "policy issue," the AAO should consider that the applicant has a fundamental right to keep his family together as guaranteed by the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment of the Constitution. *Appeal of the Denial of Application to Waive Inadmissibility Ground*, dated October 8, 2003. The AAO finds the assertion of counsel unpersuasive as counsel fails to provide precedent to support his contention and fails to establish how this supposed constitutional right should be construed by the AAO as a "policy issue". In any event, the AAO does not have jurisdiction over Constitutional matters and must limit this decision to the present waiver application.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the immediate and most important family ties of the applicant's spouse are with her husband. *Appeal of the Denial of Application to Waive Inadmissibility Ground* at 4. The record fails to establish whether or not the applicant's spouse has family ties in El Salvador or anywhere outside of the United States and does not demonstrate the extent of the familial ties that the applicant's wife enjoys within the United States beyond her children. Counsel contends that the inadmissibility of the applicant will cause extreme financial hardship to the applicant's spouse. *Id.* The AAO notes that the record does not establish that the applicant's spouse is unable to support herself financially in the absence of the applicant. Counsel states that if the applicant's spouse accompanies the applicant to El Salvador, she will suffer hardship as the applicant will most likely find only low paying work in his home country. *Id.* at 5. The AAO notes that the record fails to substantiate this claim and therefore the assertion amounts to no more than speculation regarding the employment prospects of the applicant in El Salvador.

The AAO notes that counsel makes no assertions regarding hardship imposed on the applicant's stepchildren as a result of the inadmissibility of the applicant.

The record reflects that the applicant's spouse underwent medical treatment during 2000 and 2001. According to the record, the applicant's spouse successfully completed her treatment. *Letter from Dr. Keldor*, dated July 1, 2001. Based on the record, the applicant's spouse is recovered from her previous medical condition and there is no evidence of ongoing medical attention required by the applicant's spouse.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.